

BOARD OF CHIROPRACTIC EXAMINERS

11 FOLSOM BOULEVARD, SUITE B
ACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Los Angeles Airport Hilton and Towers
Catalina B
5711 W. Century Blvd.
Los Angeles, California

APRIL 8, 1993

The Public meeting of the Board of Chiropractic Examiners was called to order at 11:30 a.m. by Chairman Louis E. Newman, D.C. Present were:

Louis E. Newman, D.C., - Chairman
Patricia B. Quibell, P.T.
R. Lloyd Friesen, D.C.
Michael J. Martelotto, D.C.
Lloyd E. Boland, D.C.

Also Present were:

Vivian R. Davis, Executive Director
Carol Bernal, Office Technician
Joel Primes, Deputy Attorney General

Agenda Item 1. Meeting of the Continuing Education Committee

Discussion of the Committee's recommendations was postponed for discussion under Agenda Item 4D.

Agenda Item 2. Approval of Action Taken in Closed Session

Mrs. Vivian R. Davis, Executive Director, reported that during Closed Session, there was no discussion with legal counsel, nor was there any discussion regarding the examination; however, there were four examination commissioners approved: Dr. Carol Soloway-Levitan, DC; Dr. Helen C. Kramer, DC; Dr. Robert Timothy Butler, DC; and Dr. Gale Walsh, DC. The Board also took action on the following matters:

Dr. Verne Robin Hubka, DC — Adopt Default Decision - Revocation

Agenda Item 12. Delegation of Authority to Sign Contracts

Mrs. Davis presented the following contracts for Board approval:

- (1) Data Processing Services. Not to exceed \$55,000, to include payments for services rendered by Teale Data Center.
- (2) Department of Consumer Affairs, Division of Investigation: investigation services. Not to exceed \$400,000.
- (3) Cooperative Personnel Services: examination consultant services. Not to exceed \$40,000.
- (4) National Board of Chiropractic Examiners: written licensing examination. Not to exceed \$30,000.

Mrs. Davis asked for delegation of authority to sign these contracts for the 1993/94 fiscal year.

Dr. Friesen moved to grant Mrs. Davis to sign the contracts, seconded by Dr. Boland. The Motion carried.

Agenda Item 5. Election of Officers

The election of new officers was postponed until the next board meeting.

Agenda Item 13. New Business

Mr. Cuneo asked if the Board was planning on making a statement in the Wall Street Journal.

Dr. Newman answered "no," and mentioned that the ACA had put in the article; the Board has received a letter from Consumer Affairs and will answer that letter. He suggested that the Journal could publish a copy of the letter from Consumer Affairs with the Board's response.

Mrs. Davis suggested that, as a courtesy, the Board should ask for permission to reprint Consumer Affairs' letter.

Dr. Newman suggested that the two letters could be published in the CCA's journal, and that the letter from Consumer Affairs, being on Consumer Affairs letterhead, was a public document.

Dr. Boland suggested that the Board could draft a response, then submit it to Consumer Affairs for their approval.

Mrs. Davis reported that the physical therapy examining committee has been writing to a number of doctors of chiropractic regarding its interpretation of § 302 paragraph (a) subsection (7); the committee believes that, since their law states that "physical therapy" and "physiotherapy" are the same things, doctors of chiropractic should not practice either.

Mr. Cuneo asked what the Board's position was; Mrs. Davis replied that the Board's interpretation has been that the physical therapy examining committee's law does not apply to chiropractors, and use of the term "physiotherapy" in advertising is permissible.

Dr. Newman asked whether there was or had been an attorney general's opinion on the distinction or identity of the terms "physical therapy" and "physiotherapy".

Mrs. Davis replied that she did not know of such an opinion, but the Board's opinion was that the term "physical therapy" was disallowed in advertising, but not the term "physiotherapy". When doctors call the Board office for an opinion, they are informed that the Board's position has not changed, but the physical therapy examining committee is sending letters to chiropractors using the term "physiotherapy" telling them that they are in violation of the law, and that they intend to cite such doctors for violations.

Mr. Cuneo asked what the Board would do if a chiropractor were cited for violation of the physical therapy law. Dr. Martello replied that the Board would do nothing, since the Board does not believe such chiropractors are violating the law.

Dr. Newman asked whether the Board could go as a friend of the court; he qualified the question by saying that the Board could not help financially in such a suit. He asked then about advertising "physical therapy modalities."

Mrs. Davis responded that the term "physical therapy" itself, regardless of qualifiers, was forbidden under § 302 (a) (7). On the other hand, she could not see a problem with mentioning individual modalities such as diathermy, traction, or ultrasound.

The meeting was adjourned.



Louis E. Newman, D.C., Chairman

, . . , Secretary

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Palmer College of Chiropractic - West
1095 Dunford Way
Sunnyvale, California

JUNE 5, 1993

The Public meeting of the Board of Chiropractic Examiners was called to order at 12:55 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., - Chairman
Patricia B. Quibell, P.T.
Michael J. Martello, D.C.
Lloyd E. Boland, D.C.
R. Lloyd Friesen, D.C.

Also Present were:

Vivian R. Davis, Executive Director
David Marty, Staff Service Analyst
Joel Primes, Deputy Attorney General

Agenda Item 1. (to be reported as Agenda Item 4D)

Agenda Item 2. Approval of Action Taken in Closed Session

Mrs. Vivian R. Davis, Executive Director, reported that during Closed Session, there was no discussion with legal counsel, nor was there any discussion regarding the examination; however, there were three examination commissioners approved: Dr. Al Landes, DC; Dr. Hugh J. Lubkin, DC; and Dr. Bruce Figoten, DC. Dr. Priscilla E. Feldsher, DC will be reviewed again in 1994. The Board also confirmed mail votes on the following disciplinary matters:

Dr. Shariar Karimi, DC - Adopt Stipulation Order

Dr. Loren Wesley Knighton, DC - Adopt Decision upon Reconsideration

Dr. Newman commented that the seminar was only for six hours, not the usual twelve.

Dr. Friesen agreed with Dr. Martello; most of the 24 points to be covered by the seminar deal with proving or disproving a personal injury claim on behalf of an attorney.

Dr. Martello brought up the issue of the accompanying advertising brochure; it states that the seminar has been approved for six hours of licensure when it hasn't.

Mrs. Quibell moved to deny relicensing credit for 1(b); seconded by Dr. Martello. The Motion carried.

7(b) "Homecoming 1993"
(National College of Chiropractic)

Dr. Boland reported that the continuing education committee had two areas of concern. His own concern was that credit was being given for the presentation entitled "The State of the College."

Dr. Martello voiced concern over the five hours credit requested for insurance reporting.

Dr. Martello explained that the subjects presented had overlapping hours, so that the attending doctor could select from a variety of topics. "The State of the College" speech is one and a half hours; if denied, that leaves $16\frac{1}{2}$ hours for approval.

The insurance section is a presentation by Howard Ross, and is similar to his presentation in the CCF seminar already approved. Dr. Boland could not see how the Board could approve his hours for one seminar and deny them for another.

Dr. Boland moved to approve 16½ hours of 7(b) for relicensing credit, seconded by Dr. Friesen. The Motion carried, with Dr. Martello opposed.

Items 4.E through 4.G were postponed until after Item 5.

Agenda Item 5. Recommendation to Adopt Emergency Regulation
Re: Infectious Diseases and Immunizations

Mrs. Davis reported that she had agreed with a legislative committee to make a recommendation on this matter before the Board; she, Dr. Martello, Dr. Newman and Mr. Primes have discussed this with Assemblyman Margolin's office.

Dr. Martello stated that there was a rising concern about doctors of chiropractic advertising in a manner which can be construed as offering spinal manipulation as a substitute for immunization or vaccination. Also, there is concern that DCs are treating patients for infectious diseases, or treating patients with infectious diseases.

In the past, the Board has felt that it has ample authority to prosecute or discipline any licentiates who have inappropriately treated patients with infectious diseases. If there had been complaints brought to the Board's attention, the Board would have scrutinized that particular provider and proceeded with investigation and discipline as necessary.

Assemblyman Margolin has introduced legislation to place an initiative on the ballot to amend the Chiropractic Act, placing a total prohibition on DCs treating infectious diseases.

Dr. Martello, Dr. Newman and Mr. Primes have met with Assemblyman Margolin, his staff, and staff from the Assembly Health Committee; they have concluded that the problem might be solvable through the regulatory process instead of through the initiative process, saving the public some expense.

Dr. Martello recommended the adoption of an emergency amendment to § 317, which would make it unprofessional conduct for a doctor to offer, advertise or substitute spinal manipulation for vaccination. He believes that this will be acceptable to Assemblyman Margolin, but does not know how the rest of the Assembly will feel.

Dr. Martello moved to adopt on an emergency basis an amendment to Title 16, California Code of Regulations, § 317, entitled "Unprofessional Conduct," and amend it to provide as follows:

"(x) The offer, advertisement, or substitution of spinal manipulation for vaccination."

Mrs. Quibell seconded. The Motion was opened for discussion.

Mr. Paul Press, from Assemblyman Margolin's staff, had a question concerning the definition of "chiropractic manipulation." In discussion, Dr. Martello had defined "chiropractic manipulation" as spinal manipulation. Dr. Newman stated that "chiropractic manipulation" is generally thought of as spinal manipulation.

Dr. Martello added that this was an emergency regulation; the Board will need time later to go to the profession and the literature and to receive public testimony concerning § 317 (x).

Mr. Press then suggested to strike the word "spinal" and insert "chiropractic manipulations and/or adjustments". Dr. Newman repeated the new version of § 317 (x): "The offer, advertisement, or substitution of chiropractic manipulations and/or adjustments for vaccination."

It was agreed that, if appropriate, modifications might be made to the language at future hearings on the emergency language.

Someone asked for a clarification of the word "adjustment." Dr. Newman replied that it refers to physical chiropractic adjustment.

There was a further question about an advertisement that stated that State Law does not require vaccination; is such an advertisement permissible?

It was explained that as long as the advertisement was strictly factual, anyone has the First Amendment right to publish it; however, if a chiropractor were to offer chiropractic treatment in lieu of vaccination for a communicable disease, that would be unprofessional conduct.

The Board members generally understood Mr. Press's concern for consistency with the existing regulations, but were more concerned about consistency with the scientific literature.

Mrs. Quibell agreed with both Dr. Friesen and Dr. Martello, because that's what is in the scope of practice.

Dr. Clum suggested that there are documents that define chiropractic manipulation and adjustment in a succinct fashion that is not inconsistent with the literature.

Mrs. Quibell made a call for the question. The Motion to adopt § 317 (x), Unprofessional Conduct ("The offer, advertisement, or substitution of spinal manipulation for vaccination") carried.

Dr. Martello reported that, in discussions with the Assembly Health Committee and Mr. Margolin, it has become clear that there are other areas dealing with infections disease that could be clarified within the regulations. One such area is communicable disease as defined in the Health and Safety Code, § 3380.

Dr. Martello moved to adopt on an emergency basis an amendment to Title 16, California Code of Regulations, § 317, entitled "Unprofessional Conduct," and amend it to provide as follows:

"(y) the treatment of a 'communicable disease' as listed in the Health and Safety Code, § 3380, as follows:

- (1) diphtheria,
- (2) hepatitis B,
- (3) hemophilus influenza type b,
- (4) measles,
- (5) mumps,
- (6) pertussis (whooping cough,)
- (7) poliomyelitis,
- (8) rubella,
- (9) tetanus.

This subsection shall not prohibit the treatment of any conditions, diseases or injuries within the legal scope of chiropractic practice as set forth in California Code of Regulations Title 16, § 302, in any patient with a 'communicable disease.'"

Dr. Boland seconded the motion, which was then opened for discussion.

Mr. Press informed the Board that Assemblyman Margolin, in his draft initiative, states that the treatment of infectious diseases is not within the scope of practice of chiropractic and empowers the Board to deal with violations under Unprofessional Conduct.

Dr. Martello's proposal is more limited than Mr. Margolin anticipated; Mr. Margolin's proposal takes up the specific language suggested to him by the CCA, the clause in question being:

"Unprofessional includes but is not limited to the following: (x) the treatment of infectious disease. This subsection shall not be interpreted to prohibit the treatment of neurological, skeletal and other condition or disease to be treated within the scope of chiropractic in any patient with said infectious disease"

Dr. Newman replied that the Board intends to deal with Mr. Margolin's language next, but that the emergency regulations were being taken in sections.

Mr. Press emphasized that Mr. Margolin's concern was not only for communicable diseases, but also for infectious diseases which are not communicable, which are not addressed in Dr. Martello's proposed language.

Dr. Martello replied that he was not offering his language as a substitute for Mr. Margolin's legislation.

The Motion to adopt § 317 (y), Unprofessional Conduct ("the treatment of a 'communicable disease' as listed in the Health and Safety Code § 3380...") carried, with Mrs. Quibell opposed.

Dr. Newman read an amendment to Title 16, California Code of Regulations, § 317, entitled "Unprofessional Conduct":

"(w) The offer, advertisement, or treatment of infectious disease with spinal manipulation as a substitute for a prescribed controlled substance pursuant to the California Uniform Controlled Substance Act, commencing at Health and Safety Code, § 1100. This subsection shall not prohibit the treatment of any conditions, diseases or injuries within the legal scope of chiropractic practice set forth in California Code of Regulation, Title 16, §302, in any patient with an infectious disease."

Dr. Boland moved to adopt § 317 (w), seconded by Dr. Martello. The motion was opened for discussion.

Someone asked for a clarification on the phrase "infectious disease." What was the regulation saying?

Mr. Primes stated that the question is an important one, and that a definition of "infectious disease" is a vital requirement in the clarification of the intent of the regulation. A law is unenforceable, vague, and unconstitutional if the people do not know what it is to prohibit. The regulation cannot be charged against a person criminally, nor civilly, nor can it be used to discipline their license if no one knows what it means. Therefore the Board is anxious to identify a definition for "infectious disease" which will address the problem Mr. Margolin is concerned with, and clarify the intent of the regulation.

Dr. Clum offered the following scenario: a patient presents for chiropractic care with a headache and cold. May the patient be adjusted for the headache?

Someone else from the audience asked: if she had a cold or the flu, and decides not to take any drugs for it, but to get a chiropractic adjustment for her cold, can she do that?

Mr. Primes answered that if a chiropractor used chiropractic manipulation as a substitute for a medication that could be prescribed for the infectious disease, that would cause the chiropractor to engage in unprofessional conduct under this proposal.

Dr. Newman commented that there is no medication for a cold. He knows of no medical doctor who prescribes anything for a cold, other than aspirin.

The questioner narrowed the question to something which a medical doctor might prescribe antibiotics for, but the patient doesn't want to take antibiotics, and would rather get an adjustment for it.

Mr. Primes restated the case: a patient comes in with symptoms which the chiropractor knows there may be medication which can handle that condition; but the patient says, "I don't want that medication; I don't want an M.D. to prescribe for me. I want an adjustment." Given those facts, the chiropractor is using chiropractic manipulation as a substitute for medication; under this proposal, that would be unprofessional conduct.

The questioner responded that, as a member of the public, she disapproved of her freedom to choose being taken away from her by a government agency.

Dr. Jeff Friedman, a chiropractor, objected that if the Board chooses to prevent chiropractic doctors from treating infections, it opens up complications. For example, when a patient walks into an office with sinusitis, it could be an allergic sinusitis to food or environment, it could be a viral sinusitis, or a bacterial sinusitis. They are all inflammations of different origin, and

they are all on the spinal chord. Does the chiropractor refer out only for bacterial sinusitis, or does the chiropractor refer out all inflammatory conditions, as in the case of viral or allergic sinusitis? Clinical diagnosis and practice is not black or white under many predations of the condition recalling infection. With a ban on infections, Dr. Friedman believes, all inflammatory conditions will need to be referred out in order to comply with the State regulations. His concern is that the definition of what infections are is a gray area.

Mr. Primes reported that Dr. Kathleen Power submitted a four-page letter to the Board office expressing concerns with the emergency regulation situation which mimic Dr. Friedman's concerns.

Mr. Cuneo commented that the CCA had submitted proposed regulation to the Board on May 17 dealing with two issues: the substitution of manipulation for vaccination and the treatment of infectious diseases.

Dr. Newman replied that the Board had looked at the CCA's language together with legal counsel and had come up with the current language.

Mr. Cuneo asked if, according to OAL rules, a proposal from an organization should be responded to within 30 days. Mr. Primes responded that referred to the normal regulatory process; this is an emergency regulation. It can be made a part of the record, but the issues would be addressed at the regulatory hearing in San Diego. The Board hasn't rejected the CCA's proposal; it is merely offering substitute language first.

Mr. Press returned to the earlier comments about a definition for "infectious disease." Assemblyman Margolin's intention in his proposed initiative was to let the definition be decided on a case-by-case basis.

The Board is still concerned about the interpretation of the phrase "infectious disease" because of its broad implications.

Mr. Press was concerned with the distinction between controlled substances and antibiotics. The proposed language does not specifically address the issue of spinal manipulation in lieu of antibiotics.

Mr. Primes replied that the language could be amended later to specifically mention antibiotics, perhaps making reference to the Federal law pertaining to controlled substances.

Further, Mr. Primes understood Mr. Margolin's desire to ban treatment of infectious disease by chiropractors without qualification, but he could not recommend such language to the Board because he felt it was unclear and did not have public input.

Dr. Martello stated that he did not want to adopt language to meet a deadline, then "unadopt" it later. He stressed that the Board

saw no problem with holding a hearing to consider language that would fully protect the public and consider everybody's viewpoint; however, there has not been ample opportunity yet to consider all viewpoints on a total prohibition on treating infectious disease. Viral infections have been implicated in a wide number of illnesses and just about every type of auto-immune disease, including rheumatoid arthritis -- something doctors of chiropractic routinely treat. This makes a total prohibition on treating infectious disease a problem. Adding a clause allowing the treatment of patients with infectious diseases for other conditions is no solution, because that forces chiropractors to diagnose something other than an infectious disease.

Mr. Press objected that there should be an acceptable way to define "infectious disease", and that he felt it inappropriate to tell doctors that they have no definition for "infectious disease" when such definitions exist in dictionaries and health manuals, defining it as infection by a micro-organism.

Dr. Friesen commented that, regardless of the question of definition, his concern was with the previously described scenario of a patient deciding against the use of antibiotics for the flu or for a cold. If such a patient were to come to a chiropractor and choose adjustment after being informed of health care options and risks, the doctor would be held for unprofessional conduct despite informed consent and freedom to choose. By the same token, he is concerned about doctors of chiropractic claiming they can treat a broad range of diseases. He feels the Board's duty in its protection of the public is to insure that they are protected while insuring the public's freedom to choose the health care delivery system they prefer. There are adequate rules and regulations requiring chiropractors to fully inform patients of the risks and options.

Ms. Vonne Gurgin of the California Medical Association (CMA) commented from the audience that the CMA's concern was that such a regulation should be dealt with not under unprofessional conduct, but under scope of practice. The CMA feels that scope of practice regulation would be far more appropriate, and that Title 16, § 302, subsection (a) ¶ (4) should be amended to include subparagraph (I):

"[A chiropractic license issued in the State of California does not authorize the holder thereof:] to treat or diagnose any infectious disease. This subsection should not be interpreted to prohibit the treatment of neurological conditions within the scope of practice of chiropractic in any patients with an infectious disease."

Dr. Newman thanked the CMA for its input.

Someone asked if the Board has received any complaints concerning this issue. Dr. Newman answered that, to his knowledge, the Board has received one complaint in the last three to five years; it was investigated and found that the patient was already under the care

of a medical doctor. Mr. Press could not confirm that Assemblyman Margolin has received any such complaints either.

Dr. Clum referred to an article concerning 125 Florida children with ear infections which did not respond to antibiotic therapy, who were referred to a chiropractor; 107 of the 125 resolved after chiropractic care. He commented that such data is becoming more available, but the regulations do not allow room to be contemporary with the literature and the findings.

Dr. Friedman agreed with Dr. Clum, and added that there have been patients who have been through medical protocol and have had antibiotic therapy, who have chronic sinusitis. He is concerned that the proposed language should leave doctors the freedom to treat patients, and to choose alternative measures through informed choice.

Mr. Cuneo commented that the CCA's suggested regulations would not have prevented doctors from treating symptoms of cold or ear infection.

Dr. Kevin McCarthy of Palmer West agreed with Dr. Friedman. He feels that there is a distinction between a statute that governs unprofessional conduct and one that limits what a doctor can treat and how. The most common definition of "infection" is "a microbe or by-product of a microbe that causes pathological responses," and therefore an infection requires antimicrobial therapy of various types. This is a broad range of four types of infection, and in each there is gross overtreatment, it is poorly defined which treatment is the best to use. The issue of unprofessional conduct should concern itself with informing the patient, presenting what is known about the infection and what treatments are available. Doctors of chiropractic have worked with pediatricians in cases such as the one presented by Dr. Clum, in which there is a joint working. He feels that it might be splitting hairs to say that doctors can treat the symptoms, but not the condition.

Dr. Martello rescinded his second to the motion in favor of collecting further information and holding further discussion with the chairman of the Assembly Health Committee.

Dr. Boland stated his concern that the Assembly Health Committee's choice not to inform or question the Board about its concerns prior to addressing the issue. He added that today there has been pointed input from the public, from research doctors, from the medical profession, and from doctors of chiropractic at this Board meeting. Also, while concerns have been expressed about freedom of choice, informed consent, mismanagement or mistreatment of patients by chiropractic measures that are inappropriate, he does not understand Mr. Margolin's time frame.

Mr. Primes suggested that a proposal could be disseminated to the public and to interested parties, and they could offer input for consideration at the July 29 Board meeting in San Diego.

of a medical doctor. Mr. Press could not confirm that Assemblyman Margolin has received any such complaints either.

Dr. Clum referred to an article concerning 125 Florida children with ear infections which did not respond to antibiotic therapy, who were referred to a chiropractor; 107 of the 125 resolved after chiropractic care. He commented that such data is becoming more available, but the regulations do not allow room to be contemporary with the literature and the findings.

Dr. Friedman agreed with Dr. Clum, and added that there have been patients who have been through medical protocol and have had antibiotic therapy, who have chronic sinusitis. He is concerned that the proposed language should leave doctors the freedom to treat patients, and to choose alternative measures through informed choice.

Mr. Cuneo commented that the CCA's suggested regulations would not have prevented doctors from treating symptoms of cold or ear infection.

Dr. Kevin McCarthy of Palmer West agreed with Dr. Friedman. He feels that there is a distinction between a statute that governs unprofessional conduct and one that limits what a doctor can treat and how. The most common definition of "infection" is "a microbe or by-product of a microbe that causes pathological responses," and therefore an infection requires antimicrobial therapy of various types. This is a broad range of four types of infection, and in each there is gross overtreatment, it is poorly defined which treatment is the best to use. The issue of unprofessional conduct should concern itself with informing the patient, presenting what is known about the infection and what treatments are available. Doctors of chiropractic have worked with pediatricians in cases such as the one presented by Dr. Clum, in which there is a joint working. He feels that it might be splitting hairs to say that doctors can treat the symptoms, but not the condition.

Dr. Martello rescinded his second to the motion in favor of collecting further information and holding further discussion with the chairman of the Assembly Health Committee.

Dr. Boland stated his concern that the Assembly Health Committee's choice not to inform or question the Board about its concerns prior to addressing the issue. He added that today there has been pointed input from the public, from research doctors, from the medical profession, and from doctors of chiropractic at this Board meeting. Also, while concerns have been expressed about freedom of choice, informed consent, mismanagement or mistreatment of patients by chiropractic measures that are inappropriate, he does not understand Mr. Margolin's time frame.

Mr. Primes suggested that a proposal could be disseminated to the public and to interested parties, and they could offer input for consideration at the July 29 Board meeting in San Diego.

Dr. Boland asked Mr. Press what kind of input Mr. Margolin would be willing to accept and provide on the issue.

Mr. Press answered that Mr. Margolin's concern was with his deadline for submitting an initiative, and whether the Board would pass what he felt was a sufficient emergency regulation quickly enough.

Dr. Boland responded that, had Mr. Margolin brought his suggestions to the Board in January, when he had first drafted his initiative, the Board would have been happy to work toward a compromise.

Dr. Martello suggested that, seeing as there were a lack of complaints on the issue, there was no reason to rush through emergency regulations without getting full input from the public.

Dr. Clum asked about the feasibility of adopting regulations with the understanding that they could be modified after a public hearing.

Dr. Newman answered that he believed that was the way the emergency regulation process works, and that Mr. Margolin was aware that emergency regulations could change after a public hearing.

Mr. Cuneo explained that if a change were made at a public hearing, Mr. Margolin would still have the option of re-introducing his legislation.

Dr. Friesen expressed hope that the Board's concerns would be taken to Mr. Margolin. The Board is charged with the protection of the public; and, although someone else may decide to put forth a regulation, the Board must rely on public input. He doesn't feel he has enough information to make a reasonable choice, based on the input offered at the meeting. His primary concern is that of freedom of choice; if a doctor can do everything required by law with the patient's consent and still be held for unprofessional conduct, that is unacceptable.

Mrs. Quibell commented to Mr. Press that she hopes he understands that the Board is trying very diligently to meet the Health Committee's proposal; however, given the rapid rate of Mr. Margolin's demand, it is difficult for the Board to respond after only one hour on an issue that will have such a profound effect, especially on the patients.

She emphasized that she is familiar with the legislative procedure and has worked with Assemblyman Stan Statham, so she knows what Assemblyman Margolin's office is obligated to do, now that the bill has been introduced; but is mindboggled that something of this magnitude would be brought forth simply because of an article in the Wall Street Journal that was undocumented, unsubstantiated, and had no input from anyone.

Dr. Boland made the point that the treatment of infectious diseases that are treatable with antibiotics should be taken care of with

antibiotics, at least on a trial basis. Also, the concern of the patient is foremost in the doctor's mind and the patient has freedom of choice, but needs to be educated and have informed decision-making procedures. He stressed that the Board is willing to work with Mr. Margolin on resolving the issue, but there are too many issues to address quickly in an adequate manner. The Board was informed of Mr. Margolin's initiative a couple of days prior to the Tuesday Assembly Committee meeting.

Dr. Helen Rodriguez-Triaz, MD, President of the American Public Health Association and pediatrician, submitted a letter dated May 22nd to Mr. Margolin on the issue as well:

"Dear Senator Margolin,

"I am a physician licensed in the State of California and a resident for the past four years. My principle work at the present is consulting in primary care, particularly in the design and implementation of programs that serve HIV-infected individuals. I have the honor this year to serve as the president of the American Public Health Association.

"As a professional committed to prevention and optimal care, I am extremely appreciative of the contributions of our chiropractic colleagues in keeping people healthy.

"I am therefore distressed at your proposed amendment to Assembly Bill # 2294, than unnecessarily restricts chiropractic practitioners in their contributions to health.

"The existing law (the Chiropractic Act) already clearly delineates chiropractic practice. To add specific proscriptions, such as an all-encompassing term 'infectious disease,' is in my opinion highly undesirable from the point of view of good health practice.

"Since there are many infectious diseases, particularly those caused by viruses, for which we have neither specific nor effective conventional medical treatment, measures that strengthen individual resistance to casual infectious agents are beneficial.

"There's a growing body of evidence that spinal manipulation may indeed have effects on cellular and possibly hormonal responses of the immune system. The law should not be used to keep patients from obtaining treatments that may help their bodies fight infection, particularly when the treatments are otherwise approved and regulated by existing code.

"I hope that you will be persuaded to

rescind your amendment."

Dr. Boland withdrew his motion to approve amendment 317 (w).

Dr. Clum asked if it would be appropriate for the Board to draft a resolution to make the intent of the Board clear to Mr. Margolin and the Assembly Health Committee.

Dr. Newman replied that he had appointed Dr. Martello as the Board's liaison to Assemblyman Margolin's office. The Board is resolved to work further on the issue, and will have a public hearing on July 29th; its intent is to develop a regulation that will address the issue of chiropractors treating infectious diseases.

Mr. Primes confirmed, in response to a question from the audience, that the Board can adopt an emergency regulation at the informational hearing if necessary.

Dr. Newman called a five-minute recess.

Agenda Item 4. E Approval of Referral Service Applications

1. Santa Clara County CCA
2. Accident Injury Associates
3. Chiropractic Referral Resource of California
4. A Professional Chiropractic Group
5. Chiropractic Information Bureau
6. Santa Barbara Chiropractic Society
7. First Chiropractic of Los Angeles County
8. All Valley Chiropractic Referral Service
9. Dial-A-Doc

Dr. Martello commented that the Board could not rescind the regulations concerning referral services, although it could so severely regulate them so as to eliminate them. The Board can introduce reporting requirements, advertising disclosure requirements, including the requirement that all advertisements must report to the public that the doctors belonging to the referral service have paid to participate in it.

He will have recommendations at the next Board meeting on additional regulatory requirements. His position is that the Board should defer approval until the regulations are in conformance with § 651 of the Business and Professions Code, but Mr. Primes has informed that this is wrong.

institutional self-study, CCE will conduct a site visit in the spring of 1994.

"The commission on accreditation will meet in June of 1994 to render a decision regarding granting of accredited status to Southern California College of Chiropractic.

"I formally request, therefore, that Southern California College of Chiropractic be granted the status outlined in paragraph one of this letter for a time period which coincides with the accreditation process as administered by the CLA/CCE. That time period is currently understood to be through June 1994.

"The college will have a representative at the June 5, 1993 Board meeting, should the Board of Examiners have any questions regarding this request.

"I personally thank you and the Board of Examiners for the effort that has been expended on behalf of Southern California College of Chiropractic regarding this and other matters."

Dr. Newman stated that no action was required at this time. Mrs. Davis agreed that no action could be taken at this time.

Dr. Newman addressed criticism that had been directed against the executive director and members of the Board regarding the way the Board handled itself at the Margolin hearings. He feels that the Board members did the best that they could do given the preparation and information they were given in the time allowed. He dismissed most of the criticism as unwarranted.

He asked the Board to entertain a motion for a vote of confidence for the executive director, who has doing an admirable job in her duties.

Dr. Boland so moved, seconded by Mrs. Quibell. The Motion carried.

Dr. Boon clarified the intent of his letter quoted above and asked if the Board could send Southern California College of Chiropractic a letter stating whether SCCC graduates would be permitted to sit for the exam until SCCC's accreditation is resolved; also, if the Board was not going to send such a letter soon, what was the Board's action going to be? Dr. Newman explained that the Board would have legal counsel look at SCCC's correspondence on the matter for an opinion, then answer SCCC's request.

Mrs. Davis explained that SCCC students are currently approved to take the exam, and that it was her feeling that SCCC's steps to get CCE accreditation were enough to warrant extended approval.

Mr. Cuneo offered for Board consideration emergency regulation on Unprofessional Conduct, § 317 (x):

"The treatment of infectious disease. This subsection shall not be interpreted to prohibit the treatment of normal musculoskeletal or other conditions, diseases or injuries within the scope of practice of chiropractic in any patient with an infectious disease."

Mr. Cuneo explained that the proposed regulation had been submitted to and approved by the Board of Directors for the CCA and sent in a letter to 3,000 of the CCA's membership. He suggested the adoption of the emergency regulation as a good-faith effort to the legislature.

Dr. Newman stated that "the treatment of infectious disease" is a very broad term; to say that chiropractors are prohibited from the treatment of infectious disease would mean that a patient with a cold could not be treated by a chiropractor.

Mr. Cuneo countered that the wording of the CCA's proposal would not prohibit treatment of patients with colds, because chiropractors do not treat the cold. He agreed that the phrase "infectious disease" was not defined in any law or regulation, but said that the Board would have latitude for interpretation.

Dr. Newman asked for clarification that both the CCA and the ICAC agree that the Board should adopt § 317 (x) at this time to show good faith to the legislature, with the knowledge that it could be changed after the public hearing in July.

Mr. Cuneo agreed, and said that any of the regulations the Board approves today -- the regulations on vaccination, communicable disease, and CCA's proposed infectious disease regulation -- could be modified within a 120-day period; and, as Mr. Press had stated earlier, if Mr. Margolin was not satisfied with the regulation, he would still have the opportunity to pursue his initiative.

Dr. Newman replied that the Board still felt the language was too broad.

Mrs. Davis asked Mr. Cuneo for confirmation that nothing will be done before June 11, 1993. Mr. Cuneo stated that the June 11 deadline was for Mr. Margolin if he wanted the legislature to act on his bill this year; he would be free to reintroduce it in January.

Mrs. Davis asked about the following scenario: a patient with an infectious disease more severe than a cold, with a potential for great injury or harm to the patient, sees a chiropractor and is told that an MD should treat the disease; the patient replies that he has been seeing an MD and the treatments have not been helping, and would rather see a chiropractor. How does the CCA's regulation change this?

Mr. Cuneo explained that the CCA has already considered these types of questions; for example, in the case of a patient with AIDS, is the doctor of chiropractic going to treat the AIDS, or treat the symptoms of AIDS?

Dr. Clum brought up the case of a patient with pneumonia and a dental problem. A dentist can deal with the dental problem. Likewise, a chiropractor can deal with a chiropractic problem when the patient still has an infectious condition.

Dr. Newman returned to the question of a patient who wants to be treated for that condition and does not want to go to a medical doctor.

Dr. Clum answered that the chiropractor would accept such a patient not on the basis of the infectious condition, but on the basis of a neurological or skeletal problem.

Dr. Newman asked whether this was falsifying records. Dr. Clum believed it wasn't. If a patient were to present with a subluxation and a middle ear infection, the chiropractor could treat the subluxation.

Kevin McCarthy of Palmer College agreed and pointed out that, in the case of a cold, a chiropractor would only treat chiropractically-treatable conditions such as subluxation which happen to be symptoms of the cold.

Mr. Cuneo responded again that no doctor to his knowledge would treat a cold.

Dr. Friesen replied he would look at it for a neuromuscular-skeletal condition. But part of the problem is: where do the symptoms of a cold begin and where do the symptoms of something else begin?

Mr. Cuneo answered, that would be determined by the licensing Board when the question arose. He added that he would agree with the Board's hesitation if an infectious disease provision were added to § 302, where any D.A. could be in the position to determine when a chiropractor has exceeded chiropractic scope of practice; but unprofessional conduct would be decided by the Board.

Dr. Newman agreed that, from a legal standpoint, Mr. Cuneo may be right; but those who have not been in practice as chiropractors can't fully appreciate the situation.

Mr. Cuneo agreed that he would have the same reservations about limiting scope of practice, but he was also aware of the political reality; chiropractors do not make up the legislature or the Supreme Court. People who are not chiropractors have their own idea about what chiropractic is, and pose a threat to the Board's initiative status and to chiropractic's existence as a profession.

Dr. Friesen stated that he prefers CCA's language because it deals

with the treatment of infectious disease; he is uncomfortable with language specifically delineating the issue. He would be supportive, but he is concerned and confused about whether he would be held for unprofessional conduct if one of his patients were to state that he wanted chiropractic treatment based on freedom of choice and informed consent.

Dr. Clum replied that chiropractors do not make their treatment based on what patients feel is the problem, but based on what they diagnose as the problem. If a patient presents with a cold, that is a subjective interpretation; the doctor would only treat the patient based on neuromuscular-skeletal conditions.

Dr. Friesen still objected that this does not answer whether he would be held for unprofessional conduct after doing everything he was supposed to do.

Dr. Newman informed the Board that, besides backing for § 317 (x) from the CCA and ICA, there have also been calls from Dr. Peter Martin and Life College supporting it.

Dr. Boone of SCCC added that he would support it, but with some of the same concerns as Dr. Friesen.

Dr. Newman stated that the Board could adopt § 317 (x) today if it so chose. Dr. Friesen moved to adopt § 317 (x); it was seconded by Dr. Boland. The Motion was opened to discussion.

Dr. Boland asked whether additional language could be adopted which addressed the matter of freedom of choice and informed consent.

Mrs. Davis explained that the language would be adopted as an emergency regulation and would be effective for 120 days; it has to go to the Office of Administrative Law for approval, and OAL must agree that there is an emergency: the Board must show that there is an emergency.

Someone asked whether the public could comment to OAL on the proposed emergency regulation. Dr. Newman explained that the public could comment to the Board after OAL has approved the language; this could be done in a letter or at the public hearing.

Dr. Martello stated that he did not think the Board should be discussing the regulation right now. The Board already had a similar motion earlier, before a room full of members of the public; this could have been brought up at that time, while the public was still present, instead of now, after most of the public has left -- particularly people adverse to the proposed language.

Mrs. Davis agreed that the people who came to the public meeting with the intent of having input on the emergency regulation left when the agenda item was previously resolved. It is further improper procedure to bring up a matter already decided, and action cannot be taken on items not agendized. Dr. Newman stated that this issue was on the agenda.

Dr. Newman commented that two of those were from Mr. Margolin's office and one was from the Medical Board. Dr. Martello added that there had also been a doctor of chiropractic and a chiropractic patient present. He said he did not feel comfortable relying on OAL to reject potentially bad language, and that adopting the regulation with the intent to change it later at a public hearing shows a lack of integrity and honesty towards Mr. Margolin's office. The Board has already demonstrated a willingness to work with Mr. Margolin on the issue. The Board has had an opportunity to look at this regulation once already; looking at it again when many of the interested members of the public have left is a backhanded way of addressing the issue.

On the question of what CCA's legal counsel had to say, Dr. Martello concluded that the Board legal counsel had met with the CCA's counsel last night and had reported an entirely different opinion. The Board should not go on the recommendations of legal counsel until both parties are present at the public hearing.

The Motion to adopt emergency regulation § 317 (w) (Unprofessional Conduct) died, with Dr. Martello and Mrs. Quibell opposed.

The meeting was adjourned.

Louis E. Newman, D.C.
Louis E. Newman, D.C., Chairman

, . . , Secretary

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Radisson Hotel Harbor View
Barrister Suite
San Diego, California

JULY 29, 1993

The public meeting of the Board of Chiropractic Examiners was called to order at 8:30 a.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., — Chairman
Patricia B. Quibell, P.T., Public Member
R. Lloyd Friesen, D.C.
Michael J. Martello, D.C.
Lloyd E. Boland, D.C.
Deborah Pate, D.C.
Mr. John D. Bovée, Public Member

Also Present were:

Vivian R. Davis, Executive Director
David Marty, Staff Service Analyst
Joel Primes, Deputy Attorney General

Agenda Item 1. **Continuing Education Committee Meeting**

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Friesen — were all present.

The committee discussed the seminars:

Life Chiropractic College's seminar "The Vertebral Subluxation Complex": Dr. Martello questioned the multiple hours on malpractice protection strategy, and would approve the seminar except for the practice and principles section of James Sigafoose (because it actually covers insurance.)

Dr. Friesen moved to recommend approval, seconded by Dr. Martello. The Motion carried.

A hearing on September 9, 1993, was noticed for the emergency regulations adopted at the June 5 meeting.

The contract for the examination validation study was extended to November 1, 1993.

The board expended its budget by \$100,000.00 in the 92/93 fiscal year. The board staff has planned to absorb the costs in other areas of the budget, and to carry over that portion which cannot be absorbed to the 93/94 fiscal year.

Mrs. Davis met with Linda Rudolph, M.D., Executive Director of the Industrial Medical Council, and Jane Rasmussen, legal counsel to discuss cooperation between the agencies on complaints.

The C.L.E.A.R. Conference is scheduled in San Diego from September 8 to 12 this year.

The next Board meeting will be held in Sacramento on September 9, 1993.

Dr. Martello moved to accept the Executive Director's Report, seconded by Mrs. Quibell. The Motion carried.

Agenda Item 5. Recommendation to Adopt Emergency Regulations
RE: Infectious Disease

Mrs. Davis reported that the Board office has received a fax from California Medical Association stating their opinion that the infectious disease regulation should not be handled under California Code of Regulations, Title 16, §317 (unprofessional conduct), but under §302 (scope of practice.) The letter was received by the Board and is available for review at the Board office.

Dr. Newman explained that if the Board adopts the emergency regulation at this meeting, it will have an informational hearing on September 9, 1993, within the 120 days required by law. The Board is not prepared to accept testimony until then, but will allow limited time at this meeting.

Dr. Newman read the text of the proposed language of California Code of Regulations, Title 16, §317(y) (unprofessional conduct): "unprofessional conduct ...treatment for infectious disease. This subsection shall not be interpreted to prohibit the treatment of neuromusculo-skeletal or other conditions, diseases or injuries within the scope of practice of chiropractic in any patient with an infectious disease." Dr. Friesen moved to adopt §317(y), seconded by Dr. Roland.

Dr. Jeffrey Friedman of San Rafael requested that the Board give guidelines for field doctors on how to comply with the regulations.

Dr. Kathleen Powers of Pasadena testified that she had become a chiropractor after being successfully treated chiropractically for an ear infection, and was concerned about the Board removing a successful method of treatment.

Dr. Larry Tain expressed his opinion that the Board ought to notify all of the licentiates about the proposed regulation.

Dr. Dwight Rhodes of El Cajon objected that this regulation was being considered, on the grounds that it departs from the core principles of chiropractic.

Dr. Richard Dahout of La Jolla read his letter to the Board, stating that the regulation would be an injustice because of the implication that failure to pass it would affect the peace or safety of the public. He cited studies on treatment of infectious diseases. The letter was entered into the minutes and is available for review at the Board

Dr. Seth Asser, MD, representing the American Academy of Pediatrics read a letter from Dr. Robert Black (chairman of the AAP,) stating an opinion that the regulation should be a part of § 302 (scope of practice) instead of § 317 (unprofessional conduct). The letter was received by the Board and is available for review at the Board office.

Dr. Kurt Wells addressed the Board to say that he had personal experience with the misuse of vaccines, and with the ability of chiropractic to effectively treat viral infections.

Dr. Reed Phillips, president of Los Angeles College of Chiropractic, questioned why infectious disease is not clearly defined in the proposed regulation, but communicable disease is well-defined; he also mentioned that LACC does teach chiropractors how to treat infectious disease, and disagrees with any attempt to limit the full use of a chiropractor's training.

Dr. Brad Sullivan of California Chiropractic Association submitted a letter on behalf of the CCA supporting the proposed regulation. The letter was received by the Board and is available for review at the Board office.

Dr. Joe Angleitner of La Jolla reminded the Board that the insurance industry accepted chiropractic treatment of infectious diseases.

Susan Friedman, a consumer, expressed her right as a consumer to choose appropriate health care.

Dr. Richard Burger of San Diego described his experiences in successfully treating infections in children chiropractically.

Dr. Parlan Edwards of San Diego complained about what he felt were anti-chiropractic actions taken by the Board.

Dr. Jerry Colino of Del Mar expressed confusion about how the regulation would change his liabilities as a chiropractor.

Dr. Newman explained the emergency regulation process.

Dr. Colino responded that chiropractors frequently treat medical failures, which includes viral infections.

Dr. Jeffrey Friedman submitted a video and a body of data on the infectious disease regulation. The letter was entered into the minutes and is available for review at the Board office.

Dr. Cynthia Leeder of Solana Beach commented that the regulation seems to limit the very thing chiropractic is intended to treat.

Dr. Newman mentioned that the Board had previously heard testimony from Palmer College of Chiropractic-West, Life Chiropractic College, Southern California College of Chiropractic, California Chiropractic Association and International Chiropractic Association-California in support of the regulation.

He also explained that, if the Board does not pass the regulation, Assemblyman Margolin intends to put a referendum on the ballot outlawing the chiropractic treatment of infectious diseases under scope of practice.

The Motion to adopt California Code of Regulations, Title 16, § 317(y) (unprofessional conduct) ("the treatment for infectious disease. This subsection shall not be interpreted to prohibit the treatment of neuromusculo-skeletal or other conditions, diseases or injuries within the scope of practice of chiropractic in any patient with an infectious disease") carried with a quorum vote, with Mrs. Quibell, Dr. Martello and Dr. Pate opposed.

Agenda Item 6. Report on FCLB Meeting

Dr. Martello reported that the keynote speaker at FCLB was an FBI representative in charge of health care fraud, who showed a video tape on workers' compensation fraud and explained the FBI's increased involvement in investigating health fraud.

The highlight of the meeting was Chiropractic Information Network Board Action Databank (CINBAD,) a new national database on state board actions.

The next FCLB meeting is a regional meeting in Portland, Oregon.

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B

SAUSALITO, CA 94961

TELEPHONE: (415) 227-2790

**MINUTES**OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD ATLos Angeles Airport Hilton and Towers
San Lorenzo Room C
Los Angeles, California

October 14, 1993

The Public meeting of the Board of Chiropractic Examiners was called to order at 1:30 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., - Chairman
Rosa-Mei Lee, Ph. D., Public Member
R. Lloyd Friesen, D.C.
Michael J. Martello, D.C.
Lloyd E. Boland, D.C.
Deborah Pate, D.C.

Also Present were:

Vivian R. Davis, Executive Director
David Marty, Staff Service Analyst
Joel Primes, Deputy Attorney General

Agenda Item 1. Continuing Education Committee Meeting

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Friesen — were all present.

Item 4. E Approval of Referral Service Applications

1. Community Chiropractic Centers
 aka Centro Quinopractico
 aka P. I. Chiropractic Network

Mrs. Davis reported that Dr. Bastomski was requesting three separate referral services: one English-language, one Spanish-language, and one directed to attorneys regarding PI cases.

Mr. Primes questioned whether a referral service directed to lawyers instead of patients matched the intent of the law.

Dr. Boland asked whether a referral service should have the words "referral service" in the name. Mrs. Davis reported that the law did not directly address that issue, but the Board could consider it false and misleading advertising.

Dr. Martello moved to table the agenda item until more information on the way the Spanish-language service was handled could be gained; seconded by Dr. Boland. The Motion carried.

Item 4. F Proposed Regulatory Language

Discussion of the Board's interpretation of § 6(d) of the Act was moved under "New Business" by Dr. Martello.

Item 4. G Executive Director's Report

The emergency language on the treatment of infectious disease, including the definition, was approved by the Office of Administrative Law (OAL) and filed on September 27, 1993. The Board is required to hold another public hearing on the emergency language. There is a hearing that will be scheduled at the December 9th meeting of the Board in Sacramento.

The Appeals Committee met in the Board Office on Tuesday, October 5th. Their report will be made at today's meeting.

Deborah Pate, DC, has been assigned to the X-ray examination; she came to the Board office on October 9th and reviewed the X-rays to be used at the November 1993 licensure examination.

The November examination will be held in Los Angeles, the written exam will be administered at Los Angeles College of Chiropractic and the practical examination will be conducted at Cleveland Chiropractic College. The Board has scheduled approximately 500 candidates for the November examination.

The next meeting of the Board and public hearing is scheduled for December 9, 1993.

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

AGENDA—December 9, 1993



NOTICE OF PUBLIC HEARING--Notice is hereby given that pursuant to the call of Chairperson, Louis E. Newman, D.C., a public meeting of the Board of Chiropractic Examiners will be held at:

State Capitol
Room 127
Sacramento, California

CONTACT PERSON: Vivian R. Davis
(916) 227-2790

9:00 a.m. PUBLIC HEARING
California Code of Regulations, Title 16, § 317(y) (unprofessional conduct)
(IF HEARING ENDS EARLY, BEGIN CLOSED SESSION)

12:30 noon LUNCH

1:30 p.m. OPEN SESSION
1. Continuing Education Committee Meeting
(Discuss seminars presented for approval on December 9, 1993)
OPEN SESSION POSTPONED UNTIL 2:30 P.M.

Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126(c) and (d) the following closed session items will be heard prior to the public session of the meeting.

- | | | |
|-----------|--|----------------------|
| 2:00 p.m. | CLOSED SESSION | |
| 1. | Pending Litigation: Garringer v. BCE (item may be deleted depending on development of case) (Gov. Code § 11126(q)) | |
| 2. | <u>A. Discussion re: outside counsel</u> | |
| | <u>B. Disciplinary Actions</u> | |
| | <u>A. Discussion and Vote on Pending Proposed Decisions and Stipulations. (Gov. Code § 11126(d))</u> | |
| | <u>B. Petition for Reduction of Penalty Marcos Benavidez (Gov. Code § 11126(d) discussion and vote)</u> | |
| 3. | <u>Examination (November 1993)</u> | |
| | <u>A. Discussion re: exam content (may be deleted if unnecessary)</u> | |
| | <u>B. Discussion on personnel applications for Examination Commissioners (Gov. Code § 11126(a)&(b))</u> | |
| 2:30 p.m. | OPEN SESSION (continued) | |
| 2. | Approval of Action Taken in Closed Session | (action) |
| 3. | Approval of Minutes: October 14, 1993 | (action) |
| 4. | Staff Report: | (information/action) |
| a. | Registration of Chiropractic Corporations | |
| b. | Requests for Duplicate Licenses | |
| c. | Consideration of Reciprocity Applications | |
| (1) | Discussion re: practice requirement in California | |
| d. | Consideration of Continuing Education Seminars | |
| e. | Consideration of Referral Service Applications | |
| f. | Executive Director's Report | |
| 5. | Proposed Regulatory Language: California Code of Regulations, Title 16, § 317(y) (unprofessional conduct) | (action) |
| 6. | Discussion Re: Acceptance of Reconstruction of Education Based on Diploma | (information) |
| 7. | Report on Continuing Education Audit | (information/action) |
| 8. | Continuing Education Discussion Re: Proposed Regulation (pending) | (information) |
| 9. | Discussion on Department of Health and Human Services letter re: loan default | (information) |
| 10. | Discussion Re: Accepting NBCE Scores in Lieu of California Practical Examination | (information) |
| 11. | New Business | |
| | ADJOURNMENT | (information/action) |

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790



MINUTES

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

State Capitol
Room 126
Sacramento, California

December 9, 1993

The Public meeting of the Board of Chiropractic Examiners was called to order at 2:30 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., - Chairman
R. Lloyd Friesen, D.C.
Michael J. Martello, D.C.
Lloyd E. Boland, D.C.
Deborah Pate, D.C.
John D. Bovée, Public Member

Also Present were:

Vivian R. Davis, Executive Director
Carol Bernal, Management Services Technician
Joel Primes, Deputy Attorney General

Agenda Item 1. Continuing Education Committee Meeting

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Friesen — were all present.

Agenda Item 5.

Proposed Regulatory Language: California Code
of Regulations, Title 16, § 317(x)
(unprofessional conduct)

Due to a conflict of interest question, and to the record remaining open for the next five working days, Dr. Martello moved to table the vote on § 317(x) until the January 6 meeting, to allow the Fair Political Practice Commission to define the potential conflict of interest; Dr. Pate seconded. The Motion carried.

Agenda Item 2. Approval of Action Taken in Closed Session

Mrs. Vivian R. Davis, Executive Director, reported that during Closed Session, the Board took action on the following matters:

- Dr. Teresa Willard, DC—Adopt Default Decision:
Revocation
- Dr. Frank L. Gradillas, DC—Adopt Stipulated Decision:
Revocation, stayed, two weeks suspension, five years probation with terms and conditions
- Dr. Mervyn St. Clare, DC—Adopt Default Decision:
Revocation
- Dr. David W. Arisman, DC—Adopt Default Decision:
Revocation

A vote was taken to confirm the mail vote on the following:

- Dr. Ramon Borrero, DC—Adopt Proposed Decision:
Reduction of penalty
- Dr. Mary Press, DC—Adopt Proposed Stipulation:
Revocation, stayed, 45 days suspension, five years probation with terms and conditions
- Dr. Curtis Lee Garrett, Jr., DC—Adopt Proposed Decision:
Deny application for restoration of license
- Dr. Paul Kobulnick, DC—Adopt Proposed Decision

The Board denied the Petition for Reduction of Penalty of Dr. Marcos Benavidez, DC.

The Board acted to approve three examination commissioners: Dr. Kenneth Winer, DC; Dr. James E. Mc Elhannon, DC; and Dr. Leonard J. Cianciolo, DC.

The Board also discussed the litigation Garringer v. the Board with legal counsel.

Dr. Pate moved to approve the action taken in closed session; seconded by Mr. Bovée. The Motion carried.

Agenda Item 3. Approval of Minutes – October 14, 1993

Dr. Martello moved to approve the minutes, seconded by Dr. Pate. The Motion carried.

The Board office was contacted on November 24 by Beverly Hunter of the Advisory Committee on Workers Compensation Fraud. On behalf of Insurance Commissioner Garamendi, she extended an invitation to the Board to send a representative to speak at their monthly luncheon scheduled for December 21 in Burbank. Dr. Friesen will be available to speak at that luncheon. Present at that luncheon will be representatives of organizations such as Safeway and Rockwell Administrators.

The next meeting of the Board is scheduled for January 6, 1994.

Dr. Martello asked Dr. Friesen if he could use the statistics prepared for Assemblyman Margolin when speaking at the insurance commissioner's luncheon. Dr. Friesen said that he intended to use as many statistical resources as possible.

Dr. Boland moved to accept the Executive Director's Report, seconded by Dr. Friesen. The Motion carried.

In response to a question from the public, Dr. Newman reminded everyone that Agenda Item 5 had been tabled at the beginning of open session until the Fair Political Practices Commission could examine the conflict of interest issue.

Dr. Brad Sullivan, DC, and Mr. Gary Cuneo of the CCA asked which sections of the law relating to conflict of interest were being cited by Dr. N. Rowan Richards; a conflict of interest accusation must be based on one of two kinds of conflict as defined by law.

Dr. Newman explained that the Board is obligated to respond to public accusations when raised; since the Board did not have information on the conflict of interest laws at the time, it was decided to table the matter until the FPPC could make a decision.

Dr. Martello raised the objection that this discussion was inappropriate because the Board had already tabled the item and announced this to members of the public who then left.

Mr. Primes agreed that this could be considered a violation of the law.

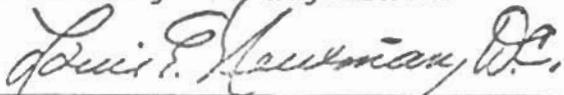
Mr. Cuneo responded that he was asking for clarification on what the Board has done, not calling for further action. Also, he asked why the Board had taken action during closed session.

Dr. Newman replied that open session began as announced at 2:30 p.m. and his first action was to move item 5 forward, because some people present for the regulatory discussion needed to leave.

Agenda Item 11. New Business

Mr. Bovée suggested changing times of meeting dates to start and end later. Dr. Newman objected to this as causing too many difficulties in travel; Dr. Friesen replied that the current time also caused problems for others regarding travel.

The meeting was adjourned.



Louis E. Newman, D.C., Chairman

(S)

, . . , Secretary

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790



AGENDA—January 6, 1994

NOTICE OF PUBLIC HEARING--Notice is hereby given that pursuant to the call of Chairperson, Louis E. Newman, D.C., a public meeting of the Board of Chiropractic Examiners will be held at:

Sheraton Harbor Island - West Tower
1590 Harbor Island Drive, Terrace "D"
San Diego, California

CONTACT PERSON: Vivian R. Davis
(916) 227-2790

9:00 a.m.	REINSTATEMENT HEARINGS
	Dr. Chapman
10:00 a.m.	Dr. Wyatt
11:30 a.m.	Continuing Education Committee Meeting (Discuss seminars presented for approval on January 6, 1994)

noon LUNCH

Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126(c) and (d) the following closed session items will be heard prior to the public session of the meeting.

1:30 p.m.	CLOSED SESSION	
1.	Disciplinary Actions	
	A. Discussion and Vote on Pending Proposed Decisions and Stipulations. (Gov. Code § 11126(d))	
2.	Examination	
	A. Discussion re: exam content	
	B. Discussion on personnel applications for Examination Commissioners (Gov. Code § 11126(a)&(b))	
3.	Pending Litigation: Garringer v. BCE (item may be deleted depending on development of case) (Gov. Code § 11126(q))	
2:00 p.m.	OPEN SESSION	
1.	Approval of Action Taken in Closed Session	(action)
2.	Approval of Minutes: December 9, 1993	(action)
3.	Staff Report:	(information/action)
	a. Registration of Chiropractic Corporations	
	b. Requests for Duplicate Licenses	
	c. Consideration of Reciprocity Applications	
	(1) Discussion re: Arizona requirements	
	d. Consideration of Continuing Education Seminars	
	e. Consideration of Referral Service Applications	
	f. Executive Director's Report	
4.	Proposed Regulatory Language: Preceptor Programs	(information/action)
5.	Proposed Regulatory Language: Referral Services	(information/action)
6.	Discussion Re: Change in Exam Format	(information)
	a. Discussion re: Additional Exams	
7.	Discussion Re: NBCE on Part III	(information)
8.	Vote: 317(x) (Infectious Disease)	(action)
9.	SCCC Request to Have Dr. Newman Speak to Student Body	(information/action)
10.	Report on Department of Insurance Advisory Committee on Workers' Compensation Fraud (Dr. Friesen)	(information)
11.	Election of Officers	(action)
12.	New Business	(information/action)
4:00 p.m.	ADJOURNMENT	

BOARD OF CHIROPRACTIC EXAMINERS

301 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790



MINUTES

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Sheraton Harbor Island - West Tower
San Diego, California

January 6, 1994

The Public meeting of the Board of Chiropractic Examiners was called to order at 2:00 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., - Chairman
Rosa-Mei Lee, Ph. D., Public Member
R. Lloyd Friesen, D.C.
Michael J. Martello, D.C.
Lloyd E. Boland, D.C.
Deborah Pate, D.C.
John D. Bovée, Public Member

Also Present were:

Vivian R. Davis, Executive Director
David Marty, Staff Service Analyst
Joel Primes, Deputy Attorney General

Continuing Education Committee Meeting

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Friesen — were all present.

Dr. Martello commented that there was a greater number of technique seminars submitted for approval at this board meeting.

The committee discussed the seminars:

Life Chiropractic College's "Chiropractic Biophysics"
(two different seminars submitted for approval)

A member of the audience asked what the ruling of the FPPC was. Mr. Primes read the FPPC's conclusion; which was that "Dr. Friesen may participate in the board decision regarding adoption of its regulation 317(y) if the decision will have no financial effect on the California Chiropractic Association, a source of income to him."

The audience member asked whether there was a financial impact on the CCA; Dr. Newman responded that the subject of the agenda item was the vote on 317(x), and the question of financial impact should be left to attorneys. That question should be directed to the FPPC.

The questioner asked whether she could request a ruling from the attorney general. Mr. Primes stated he has met in an attorney-client relationship with Dr. Friesen and given him advice which he is not at liberty to divulge.

The questioner asked for further details on Dr. Friesen's salary from the CCA. Dr. Friesen replied that he is not a "paid board member of the CCA," as stated. Mr. Primes stated that the amount of any money paid to Dr. Friesen for his duties in the CCA is not part of the memo from FPPC and is not part of the public record.

Dr. Martello said that the testimony raised many questions which suggests the board should provide guidance to the licentiatees on complying with the regulation. Many comments on the clarity of the regulation were also made; Dr. Martello is unsure that those regulated fully understand the language or its parameters for application. The substantial testimony on 317(x) was mostly opposed to the regulation.

There were many good arguments addressing the six points OAL reviews regulations for; the board should look at those arguments and consider amending the proposed regulation. Many felt that pending legislation was not a good reason to adopt the regulation.

Because there have never been complaints relating to the regulation, there seems to be no danger to the public health; this calls into question the need for this regulation.

Dr. Martello is opposed to the regulation as it is currently written, unless it is amended and there is further discussion.

Mr. Bovée stated that, as public member, he fully supports the motion. The regulation is in the best interest of California citizens. Other states have such regulation and live under it quite nicely, without catastrophe.

He stressed that politics was not the issue for him personally, since neither he nor any of his relatives are chiropractors. The regulation simply protects California citizens, so he will vote in favor of it.

An audience member questioned whether there was any danger to the public. Mr. Bovée declined to debate the matter any further, and only specified that New York is one state already using such a regulation.

The audience member objected to a lay person making decisions affecting chiropractic when he has only served for six months; he also objected to such a person suggesting a danger from trained chiropractors. He asked where Mr. Bovée gets the qualification and background to make such statements and decisions.

Mr. Primes responded that Mr. Bovée is qualified because he is a board member who has listened to and read the testimony. The law of California authorizes lay members of licensing agencies to have full voting powers.

Dr. Parlan Edwards expressed disbelief that Mr. Bovée has the right to make laws that will protect anybody, and thinks the board has no such power.

Mr. Primes stated that the law grants to the board the specific ability to protect the consumer public.

Dr. Edwards stated that the board was appointed by the governor, and the governor has no such power.

Dr. N. Richards asked again that the board members each explain their reasons for their vote. Dr. Newman stated that this was inappropriate. If she wished to ask the board members individually outside of the meeting, that was another matter. The board would be justifying its votes to the Office of Administrative Law, and that would be available to the public from OAL.

The vote on 317(x) was four in favor, Dr. Martello and Dr. Pate opposed, with Dr. Friesen abstaining. The Motion carried.

Agenda Item 9. Southern California College of Chiropractic's Request to Have Dr. Newman Speak to Student Body

Dr. Newman reported a discussion with college representatives on the disciplinary problems the board has to deal with. The feeling is that students do not know what is involved; for example, chiropractors should explain certain procedures before using them on female patients so that they do not feel the doctor is being fresh.

Southern California College of Chiropractic has asked Dr. Newman to speak to their student body on this, and bring actual cases as examples of insurance fraud, sexual abuse, and other misconduct.

Dr. Newman had told SCCC he would do it if the board approved, because he would be going as a board member, not as an individual.

Dr. Pate moved to send Dr. Newman as a board representative to SCCC; seconded by Dr. Martello. The Motion carried.

Agenda Item 10. Report on Department of Insurance Advisory Committee on Workers' Compensation Fraud
(Dr. Friesen)

Dr. Friesen reported that he represented the board at the December 22nd meeting of the Department of Insurance Advisory Committee on Worker's Compensation Fraud. While there, he offered two comments: first, that chiropractic providers were getting tired of being presumed guilty until proven innocent in fraud cases; second and more important was that this was a rare opportunity for the board and the profession to meet with insurance investigators in other than a head-on confrontation.

He has written a memo, supplemented by commentary by Mrs. Davis, responding to some of the concerns raised by insurance investigators; he feels confident that it addresses their questions adequately. The Department of Insurance has requested a board representative to attend their meetings, which are held in Los Angeles every six to eight weeks. He suggested a board member from the southern area.

Dr. Martello reported comments from staff at the Department of Insurance that they believed Dr. Friesen would be treated harshly, but wound up carrying himself well and leaving a positive impression.

Dr. Friesen replied that he had feared the worst at first, but explained to the investigators that their area of concern was fraud, while the board, as a licensing agency, deals in that issue partly, but mostly with sexual harassment and abuse, drug and alcohol abuse, and other issues that more directly impact on the patient.

Dr. Friesen added that he would be able to represent the board if need be. Dr. Boland offered to be his alternate.

Agenda Item 11. Election of Officers

Dr. Boland nominated Dr. Pate for secretary; seconded by Dr. Friesen. There were no further nominations. Dr. Boland moved to close the nominations for secretary. The Motion carried.

Mr. Bovée nominated Dr. Boland for vice-chair; seconded by Dr. Friesen. There were no further nominations. Dr. Pate moved to close the nominations for vice-chair. The Motion carried.

Mr. Bovée nominated Dr. Newman for chairman; seconded by Dr. Pate. There were no further nominations. Dr. Martello moved to close nominations for chairman. The Motion carried.

Agenda Item 12. New Business

There was no new business.

The meeting was adjourned.

Louis E. Newman, D.C., Chairman

Dr. Deborah Marie Pate, D.C., Secretary

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790



AGENDA—March 24, 1994

NOTICE OF PUBLIC HEARING—Notice is hereby given that pursuant to the call of Chairperson, Louis E. Newman, D.C., a public meeting of the Board of Chiropractic Examiners will be held at:

Los Angeles Hilton and Towers
San Lorenzo Room "D"
5711 W. Century Boulevard
Los Angeles, California

CONTACT PERSON: Vivian R. Davis
(916) 227-2790

- 9:00 a.m. Reinstatement Hearings
1. Dr. Julius Brown, DC
2. Dr. Theodore R. Wyatt, DC
3. Dr. Richard Dana Clark, DC

12:30 p.m. LUNCH

Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126(c) and (d) the following closed session items will be heard prior to the public session of the meeting.

- 1:30 p.m. CLOSED SESSION
1. Disciplinary Actions
A. Discussion and Vote on Pending Proposed Decisions and Stipulations. (Gov. Code § 11126(d))
2. Examination
A. Discussion on personnel applications for Examination Commissioners (Gov. Code § 11126(a)&(b))
B. Discussion Re: Special Consideration on Physiotherapy Exam (content)
3. Pending Litigation: Garringer v. BCE (item may be deleted depending on development of case) (Gov. Code § 11126(q))
- 2:00 p.m. Continuing Education Committee Meeting
(Discuss seminars presented for approval on March 24, 1994)
- 2:30 p.m. OPEN SESSION
1. Approval of Action Taken in Closed Session (action)
2. Approval of Minutes: January 6, 1994 (action)
3. Staff Report:
a. Registration of Chiropractic Corporations
b. Requests for Duplicate Licenses
c. Consideration of Reciprocity Applications
d. Consideration of Continuing Education Seminars
e. Consideration of Referral Service Applications
f. Executive Director's Report (information/action)
4. SB 1821 (Veterinary Chiropractic) (action)
5. Bradley Wolfe, DC — Question Re: Chiropractic Techniques (information)
6. Proposed Regulatory Language: Referral Services (Draft for Board Review) (information/action)
7. Approve Amendment to § 349 for Notice (Interpretation of Section 6(d) of the Act) (action)
8. New Business (information)
- 4:00 p.m. ADJOURNMENT

BOARD OF CHIROPRACTIC EXAMINERS

FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Los Angeles Hilton and Towers
San Lorenzo Room "D"
Los Angeles, California

March 24, 1994

The Public meeting of the Board of Chiropractic Examiners was called to order at 2:40 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C. - Chairman
Lloyd E. Boland, D.C. - Vice Chairman
R. Lloyd Friesen, D.C.
Michael J. Martello, D.C.
Deborah Pate, D.C. - Secretary
John D. Bovée, Public Member

Also Present were:

Vivian R. Davis, Executive Director
David Marty, Staff Service Analyst
Joel Primes, Deputy Attorney General

Dr. Friesen reported that the following seminars were denied approval, and the committee is requesting that the sponsors resubmit the seminar with specific information, references, and syllabus:

Cleveland Chiropractic College, "Repetitive Posture Stress Patterns"

Life College of Chiropractic-GA, "The Infant & Pediatric Patient". Each part should be re-submitted individually.

Parker College of Chiropractic, "FCA Spring Convention '94"

Sherman College of Straight Chiropractic, "Network Chiropractic Modules ABC"

He also stated that several of the sponsoring organizations need to be reminded about the regulations concerning the 45-day submission deadline.

Item 3. E Approval of Referral Service Applications

There were no referral service applications, due to the proposed regulatory language still under consideration.

Item 3. F Executive Director's Report

Following the January meeting, the rule-making file on 317(x) (infectious disease) was submitted to the Office of Administrative Law. The emergency regulation was disapproved. On March 16, 1994, the Board received a detailed explanation of the disapproval. The primary reasons for disapproval was the failure to meet the clarity and necessity standards.

The November 1993 examination results were mailed January 28, 1994. Examination appeals were accepted for 30 days after that date. The Appeals Committee met to consider the appeals on March 17, 1994, in San Diego. Twenty-nine approvals were recommended, which, if approved, would result in the issuance of 20 new licenses.

Again, the May 1994 examination will be held in June. This is due to a conflict with the Memorial Day weekend and a conflict with when the site for the examination is going to be available. The exam will be administered June 14 the 18 at Palmer College of Chiropractic's new campus in San Jose. A new format in the administration of the x-ray examination is anticipated.

The Board was scheduled for budget hearings yesterday in both the Senate and Assembly; the legislature again this year is concerned with spending and has recommended the cutting of travel by 50%. One way the Board may be able to accomplish this goal is to schedule two-day meetings four times a year, rather than one-day meetings eight times a year; this would reduce travel to some degree. The Board currently holds eight regular meetings, two appeals committee meetings, and two examinations a year. The Board's current travel budget is \$55,000.00 in state, \$3,000.00 out-of-state.

The next regular meeting of the Board is scheduled for May 5th, 1994, in Sacramento. That is the Board meeting used to set the final filing date for the examination.

Dr. Martello moved to accept the Executive Director's Report, seconded by Dr. Pate. The Motion carried.

Dr. Newman commented that, if the Board held quarterly meetings, special arrangements would be needed to handle continuing education seminar applications; handling all the seminars only four times a year would be too great a workload.

Mr. Primes suggested using a committee the meets separate from the Board; discussion on how to handle the seminars is postponed for a future meeting.

Dr. Newman also mentioned possible conflicts with the Board's plan to have only three exams per year. Mrs. Davis replied that one of the suggestions is to reduce the length of time needed to give the exam; it might be possible to accomplish the entire practical examination in two days, rather than in four days. If the Board could do that, then a third examination could be given without spending more money. By 1998, the Board must decide what to do about the written examination, since the NBCE will not be preparing a state written exam any more. For the last few exams, the adjustive technique and x-ray exams have been combined on one day.; if the format of one or both of the physiotherapy and clinical competency examinations is changed so that they may be combined in one day, then the entire practical could be administered in two days.

Agenda Item 4. State Senate Bill SB 1821 (Veterinary Chiropractic)

Dr. Newman reported that the Veterinary Board objects to chiropractors adjusting animals. He, Mrs. Davis, and the chairman, executive director, and one member of the Veterinary Board met to discuss the situation; the proposed solution was for a certification course to be given at one of the veterinary colleges for that veterinarians and chiropractors; the Veterinary Board said it would draw up a letter of intent and would send it to the Board of Chiropractic Examiners in about a week.

After two weeks and a few unreturned telephone calls, Dr. Newman was informed that the executive director of the Veterinary Board was seeking someone to author a bill.

The bill introduced by Senator Kelley states that practice of acupuncture, dentistry, and chiropractic on animals will be considered the practice of veterinary medicine. The word "chiropractic" is in the bill.

Dr. Newman believes this extends the scope of practice of veterinary medicine and is conflicting with the Chiropractic Act.

Mrs. Davis reported that the Veterinary Act is broadly written, like the medical practice act, and covers any work done on animals; however, the problem arises in the new bill's use of the term "animal chiropractic".

Dr. Newman agreed that the performance of manipulation by veterinarians untrained in manipulation, just as the practice of chiropractic on animals by chiropractors lacking knowledge of animal anatomy, is adjustment without the proper training; he feels that a chiropractor treating an animal should be doing so in conjunction with a veterinarian.

Mr. Primes stated it is important to notify the Association and the Board's chiropractic colleagues that the proposed language permits the practice of "acupuncture", with no restriction to practice on animals; likewise, no restriction is placed on dentistry. The language of the bill is poorly drafted and should be opposed.

Agenda Item 5. Bradley Wolff, DC - Question re: Chiropractic Techniques

Dr. Wolff addressed the Board on the issue of the changing definition of chiropractic practice. He mentioned that the growth of nontraditional methods in chiropractic practice has lead to a confusion in the public eye as to what is or is not true chiropractic. He urged the Board to take steps to restrict the use of nonstandard techniques, allowing that doctors can use such techniques as long as they do not claim them as part of chiropractic practice.

He suggested the following criteria:

A diagnostic or adjustive technique is acceptable as valid if it is one of the following:

- a. the technique has been in general and accepted practice by the majority of chiropractors in private practice in California; or,
- b. the technique is taught at an accredited chiropractic college in technique class during normal school hours by instructors who normally teach technique; or,
- c. the technique must be a technique that is allowed to be used during the adjustive portion of the state board exam; or,
- d. the technique must have support in the credible chiropractic literature.

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790



AGENDA—May 5, 1994

NOTICE OF PUBLIC HEARING—Notice is hereby given that pursuant to the call of Chairperson, Louis E. Newman, D.C., a public meeting of the Board of Chiropractic Examiners will be held at:

State Capitol
Room 127
Sacramento, California

CONTACT PERSON: Vivian R. Davis
(916) 227-2790

9:00 a.m. Hearings: Petition for Reduction of Penalty
1. Richard Kleefeld, D.C.
2. Erick Razz, D.C.

11:30 p.m. Continuing Education Committee Meeting
(Discuss seminars presented for approval on May 5, 1994)

12:00 p.m. LUNCH

Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126(c) and (d) the following closed session items will be heard prior to the public session of the meeting.

1:30 p.m. CLOSED SESSION
1. Disciplinary Actions
A. Discussion and Vote on Pending Proposed Decisions and Stipulations. (Gov. Code § 11126(d))
2. Examinations
A. Discussion re: June 1994 Exam Content
B. Discussion re: Future Examinations
C. Discussion on personnel applications for Examination Commissioners (Gov. Code § 11126(a)&(b))
3. Pending Litigation: Garringer v. BCE (item may be deleted depending on development of case) (Gov. Code § 11126(q))

2:30 p.m. OPEN SESSION
1. Approval of Action Taken in Closed Session (action)
2. Approval of Minutes: March 24, 1994 (action)
3. Staff Report:
a. Registration of Chiropractic Corporations
b. Requests for Duplicate Licenses
c. Consideration of Reciprocity Applications
d. Consideration of Continuing Education Seminars
e. Consideration of Referral Service Applications
f. Executive Director's Report (information/action)
4. Report on the FCLB Meeting (Dr. Martello) (information)
5. Discussion re: Administration of a 3rd Licensure Examination (information/action)
6. Consideration of Scheduling Board Meetings to Begin Later in the Day (information/action)
7. Discussion re: the Board Consultant Position (information)
8. Proposed Regulatory Language: Referral Services (When to Schedule Public Hearing) (information/action)
9. Coöperative Personnel Services Validation Study (information)
10. SB 1905 5-year Limit on Regulations (sunset law) (information)
11. New Business (information)

4:00 p.m. ADJOURNMENT

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

State Capitol
Room 127
Sacramento, California

May 5, 1994

The Public meeting of the Board of Chiropractic Examiners was called to order at 2:30 p.m. by Chairman Louis E. Newman, D.C.

Present were:

Louis E. Newman, D.C., — Chairman
Lloyd E. Boland, D.C. — Vice Chairman
Jeffrey M. Steinhardt, D.C.
Michael J. Martello, D.C.
Sharon B. Ufberg, D.C.
John D. Bovée, Public Member
Rosa-Mei Lee, Ph. D., Public Member

Also Present were:

Vivian R. Davis, Executive Director
E. Carol Bernal, Management Services Technician
Joel Primes, Deputy Attorney General

Dr. Newman introduced the new boardmembers: Dr. Ufberg and Dr. Steinhardt.

Continuing Education Committee Meeting

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Ufberg — were all present.

Dr. Newman was also present, and addressed the committee before its consideration of seminars submitted for approval to the May meeting. At a prior meeting, Sherman College of Straight Chiropractic's seminar "Network Chiropractic Modules ABC" was denied approval until the sponsor could resubmit the seminar with more complete information, references and syllabus. Dr. Newman reported that the Sherman seminar was a new date and location of a previously-approved seminar.

Dr. Martello asked whether applications are sent to the sponsors, or do the sponsors make copies of applications they have on file; Mrs. Davis answered that the staff sends out the application, but that it is possible that the sponsors are photocopying existing applications.

Item 3. E Approval of Referral Service Applications

There were no referral service applications submitted for approval to the May 5, 1994, Board meeting, because of the proposed regulatory language still under consideration (see Agenda Item 8.)

Item 3. G Executive Director's Report

On April 26, 1994, the Board office was contacted by a representative from the American Academy of Pediatrics. The question asked was: what had happened to the infectious disease regulation. The representative was told that the regulation had been disapproved by the Office of Administrative Law (OAL). On Friday, April 29, the board office received a telephone call from Paul Press asking what the Board intended to do with the regulation. He expressed his desire to have the Board continue to pursue adopting a regulation on this issue. I advised him that I would relay his wishes to the Board.

The American Academy of Pediatrics had offered previously to work on developing a more acceptable definition of "infectious disease." At the time that they made that offer, the message that the Board had received was that the Assemblymember would not accept any further language changes in the regulation, so there was no response to their offer.

Tentatively, the Board has a meeting scheduled for June 9, 1994, in Palm Springs. This meeting was scheduled to be held back-to-back with the Chiropractic Convention, and would allow the profession the opportunity to participate. The question has been raised whether or not this meeting is necessary, since the licensure examination will be administered in Sunnyvale the following week.

The licensure examination is being held in June in part to accommodate the college. The week the examinations will be held is a week during which the college is closed; therefore, there will be no disruption of classes. Palmer College of Chiropractic West has requested that future exams scheduled on their campus be scheduled on dates when the college is closed, and the board staff has no problem with this request. If it is possible to reformat the examination structure, and to eventually eliminate the administration of the written examination, at least in conjunction with the practical exam, it may ultimately be possible to administer the examination over a weekend.

Agenda Item 9. Cooperative Personnel Services Validation Study

Pat Volz from Cooperative Personnel Services reported the results of the comprehensive validation study; representatives of the profession were surveyed on their practice and the skills necessary for chiropractic.

Skills were rated by importance and frequency. Doctors were also asked about the scope of practice appropriate to chiropractic. Because of the holistic approach of chiropractic, the relevancy of some of the test questions to clinical competency had a broad applicability in the view of the doctors surveyed. Other areas, such as equipment used by or necessary to chiropractic, had a greater degree of agreement.

Part Two of the validation study examined which of the tasks typical of managed health care professionals are part of the job requirements of chiropractic; this will enable the construction of a more legally-defensible licensure exam.

One of the findings of the study was that more could be accomplished in less time during testing. Other methods of testing were mentioned, such as computer-based or virtual reality testing.

Agenda Item 8. Proposed Regulatory Language: Referral Services

The previously-approved regulatory language on referral services will be noticed for a public hearing at the July 7th board meeting.

Agenda Item 10. SB 1905 5-year Limitation on the Effective Duration of Regulations (sunset law)

The text of this law was presented for the information of the board members and the public.

Agenda Item 11. New Business

Dr. Newman reported that on March 9, 1994, the Office of Administrative Law (OAL) rejected the regulation which the Board of Chiropractic Examiners had adopted to clarify that it is unprofessional conduct for a chiropractor to treat a patient for an infectious disease. The Board has attempted to address this issue through the regulatory process for well over a year. Upon further consideration, particularly in view of the apparently unsurmountable objections raised by the OAL, the Board has decided that it will not attempt to revisit this regulation at this time.

The Board appreciates the legitimate and serious concerns raised by a few well-publicized incidents regarding improper practices by some chiropractors in the treatment for infectious diseases. The Board has always taken the view that it has the authority to undertake investigations and enforcement activity in this area.

The Board will vigorously pursue any matter of alleged unprofessional conduct, whether regarding treatment for infectious diseases, failure to refer, or otherwise.

The meeting was adjourned.

Louis E. Newman, D.C.
Louis E. Newman, D.C., Chairman

Lloyd E. Boland, D.C.
Lloyd E. Boland, D. C., Vice Chairman

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
 SACRAMENTO, CA 95816
 TELEPHONE: (916) 227-2790

AGENDA—July 7, 1994



NOTICE OF PUBLIC HEARING--notice is hereby given that pursuant to the call of Chairperson, Louis E. Newman, D.C., a public meeting of the Board of Chiropractic Examiners will be held at:

Sheraton Harbor Island - West Tower
 1590 Harbor Island Drive, Terrace "D"
 San Diego, California

CONTACT PERSON: Vivian R. Davis
 (916) 227-2790

9:00 am Petition for Reduction of Discipline
 Dolphus Pierce, DC

Pursuant to the Bagley-Keene Open Meeting Act, Government Code Section 11126(c) and (d), the following closed session items will be heard prior to the public session of the meeting.

- | | |
|----------|--|
| 10:00 am | <ol style="list-style-type: none"> 1. Disciplinary Actions 2. Examinations: <ol style="list-style-type: none"> a. Discussion Re: exam content b. Commissioner Applications 3. Consult with Legal Counsel |
|----------|--|

11:30 am CONTINUING EDUCATION COMMITTEE MEETING
 (Discuss seminars presented for approval on July 7, 1994)

noon LUNCH

- | | | |
|---------|---|----------------------|
| 1:30 pm | OPEN SESSION | |
| | 1. Approval of Action Taken in Closed Session | (action) |
| | 2. Approval of Minutes: May 5, 1994 | (action) |
| | 3. Staff Report: <ol style="list-style-type: none"> a. Registration of Chiropractic Corporations b. Requests for Duplicate Licenses c. Consideration of Reciprocity Applications d. Consideration of Continuing Education Seminars e. Consideration of Referral Service Applications f. Executive Director's Report | (information/action) |
| | 4. C.L.E.A.R. Conference: Appointment of Delegates | (action) |
| | 5. Continuing Education Regulation, AIDS Regulation, Referral Regulation, Parts I, II, III & Physiotherapy Regulation, Preceptorship Regulation Update | (information/action) |
| | 6. Consideration of Legislation to Increase Licensure, Corporation, Satellite Clinic and Examination Fees and Modify Examination | (information/action) |
| | 7. Discussion Re: Third Examination | (information/action) |
| | 8. Information Re: Hiring of Chiropractic Consultant | (information) |
| | 9. Continuing Education Audit | (information) |
| | 10. Report by Ralph Boone, President, Southern California College of Chiropractic | (information) |
| | 11. Discussion Re: Child Abuse | (information) |
| | 12. New Business | (information/action) |

4:00 pm ADJOURNMENT

BOARD OF CHIROPRACTIC EXAMINERS

3401 FOLSOM BOULEVARD, SUITE B
SACRAMENTO, CA 95816
TELEPHONE: (916) 227-2790

**MINUTES**

OF THE
BOARD OF CHIROPRACTIC EXAMINERS
HELD AT

Sheraton Harbor Island - West Tower
1590 Harbor Island Drive, Terrace "D"
San Diego, California

July 7, 1994
11:30 am—Continuing Education Committee Meeting

The members of the Continuing Education Committee — Dr. Martello, Dr. Boland, and Dr. Ufberg — were all present.

The committee discussed the seminars:

California Chiropractic Foundation's seminar "Fundamentals of Applied Kinesiology in Clinical Practice Sessions 1 & 2": Dr. Boland noted that there was a discrepancy in the number of hours on Session 1 in the syllabus.

Cleveland Chiropractic College — LA's seminar "Advanced Principles of Lower Extremity Adjusting": Dr. Boland and Dr. Ufberg questioned whether the seminar was submitted prior to the 45-day deadline before the first seminar date.

CCC-LA's "S1/Lumbars & Pelvis": Dr. Boland noted a February date is missing from the seminar list. Dr. Martello explained that the seminar date was prior to the submission of the application, so the Board wouldn't be approving it.

Life Chiropractic College — GA's seminar "Chiropractic Biophysics Level 6,4 & 3": Dr. Ufberg asked whether the Board was giving credit for infant adjustment technique. Dr. Boland commented that LCC-GA was submitting three seminars, but only one fee; also, he asked which dates belong to which level.

July 7, 1994

Item 3. F

Executive Director's Report

The Board meeting scheduled for June was cancelled to avoid additional expenses prior to the end of the fiscal year.

The Licensure examination was conducted at the Palmer College of Chiropractic West new campus in San Jose, California. The Board thanks Dr. Martin and his staff for their gracious cooperation during the administration of the examination.

Several logistical problems occurred during the administration of the X-Ray examination. Due to the administrative problems encountered in the X-Ray examination, the Board has decided to allow a special re-examination in X-Ray.

Several incidents occurred at the examination, where the conduct of some candidates was less than professional. The Board understands that the stress level is high at a licensure examination, and that level is elevated when problems occur. However, problems occur every day in the practice of chiropractic. Doctors are expected to react rationally and with professionalism. There are avenues available to resolve problems. This type of behavior does not reflect well on the chiropractic profession, and we would request that the representatives of the colleges convey this information.

The budget has been signed and the Board staff is proceeding the process of classifying the Chiropractic Consultant position and hiring a doctor fill that position. It is anticipated that the announcement will be made public in the fall; hiring will follow the interview and selection process. It is also anticipated that the Board's legal counsel will participate in the hiring of the consultant.

At the May meeting, Dr. Newman read into the record the following statement as the New Business item:

On March 9, 1994, the Office of Administrative Law rejected the regulation which the Board of Chiropractic Examiners has offered to clarify that it is unprofessional conduct for a chiropractor to treat a patient for an infectious disease. The Board has attempted to address this issue through the regulatory process for well over a year.

Upon further consideration, particularly in the view of the apparently unsurmountable objections raised by the Office of Administrative Law, the Board has decided that it will not attempt to revisit this regulation at this time.

July 7, 1994

Executive Director's Report (continued)

The Board appreciates the legitimate and serious concerns raised by a few well-publicized incidents regarding improper practices by some chiropractors in the treatment for infectious diseases. The Board has always taken the view that it has the authority to undertake investigations and enforcement activity in this area.

The Board will vigorously pursue any matter of alleged unprofessional conduct, whether regarding treatment for infectious diseases, failure to refer, or otherwise.

This statement is part of the record of the May 1994 meeting.

The Board anticipates conducting a training of expert examiners in October 1994. Mr. Primes will be instrumental in reviewing those issues dealing with complaint and investigation review.

The next meeting of the Board will be September 8, 1994 in Sacramento, California. At that time, there will be a public hearing on the noticed regulatory changes.

Dr. Martello moved to accept the Executive Director's Report, seconded by Dr. Boland. The Motion carried.

Agenda Item 4. C.L.E.A.R. Conference: Appointment of Delegates

Dr. Newman reported that the C.L.E.A.R. conference will be held in Boston, Massachusetts. The State Board in the past has sent two delegates: a member of the staff and a board member.

Dr. Ufberg was named as a possible delegate, and Dr. Martello offered to be an alternate.

Agenda Item 5. Continuing Education Regulation
AID Regulation
Referral Service Regulation
Acceptance of NBCE Parts I, II, III & PT
Preceptorship Regulation

David Marty reported that on Tuesday, July 5th, the language for the referral service and preceptorship regulations was completed; the acceptance of National Boards parts I, II, III and physiotherapy, which would require changes to both § 346 and § 349 of the California Code of Regulations, Title 16, Division 4, was saved for discussion.

July 7, 1994

New Business (continued)

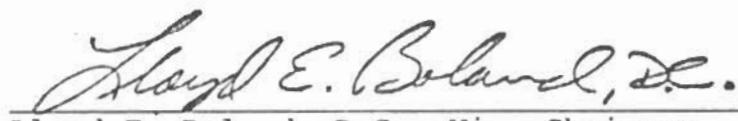
In response to a question from the audience, Mrs. Davis clarified that the x-ray examination retake date has not been set, but will be in the end of July through the beginning of August, depending on the availability of facilities.

Dr. Phillips commended the Board for quick action on the x-ray appeals.

The meeting was adjourned.



Louis E. Newman, D.C., Chairman



Lloyd E. Boland, D.C., Vice-Chairman

Have you checked the reg on the web site? The authority and history is provided at the end of the text. Please check there first and if you need additional information, please let us know.

-----Original Message-----

From: B & B [mailto:btimes2@earthlink.net]
Posted At: Wednesday, February 18, 2004 12:24 PM
Posted To: Web Email
Conversation: reg 317(z)
Subject: reg 317(z)

I would like to know about the adoption of 317(z) treatment of infectious disease, Unprofessional Conduct. Could you please send to me the date this regulation was introduced, the dates of the mandatory hearings, the OAL review findings, and date of adoption by the BCE?

It is my understanding that this regulation, originally adopted as an emergency regulation, was rejected by the OAL. If this regulation was ultimately not adopted, which I believe the situation to be, could you please update your website to reflect this? I have had two different California County District Attorney's offices contact me regarding possible prosecution of local DCs in their jurisdictions under this section. In both instances, they have referred to your website as the source used to obtain the regulations.

Thank you very much.

Brian A. Smith, DC

This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error please notify the system manager.

This footnote also confirms that this email message has been swept by MIMEsweeper for the presence of computer viruses.

www.mimesweeper.com

From: "B & B" <btimes2@earthlink.net>
To: "office" <doctorsmith@earthlink.net>
Subject: Fw: reg 317(z)
Date: Thursday, February 19, 2004 9:59 PM

----- Original Message -----

From: B & B
To: Kim Smith
Sent: Thursday, February 19, 2004 8:47 AM
Subject: Re: reg 317(z)

Dear Kim,

Yes, I have checked that section and the authority listed does not provide the desired information, The B&P references don't specify anything about adoption of 317(z). They refer to the 1923 Act which did not have this, or anything resembling this, in place.

There was an attempt in 1994 to adopt such a regulation but it was rejected by the OAL. For several years after 1994, I received every notification of pending regulations that was properly sent by the BCE and there was no introduction of 317(z), no hearings, no vote. etc.

Since this is appearing on your website as a legally adopted regulation, and I have seen the regulations in print form the same way, I would like to have the authority on which 317(z) was adopted sent to me so I can analyze it.

I have reason to believe that this is an error - it was printed as an emergency regulation, then subsequently printed as an adopted regulation before it was actually adopted. Since the OAL denied the BCE's adoption, and the regulation regarding infectious disease was stopped, it should not appear in print or otherwise.

Could you please research this out for me and get back to me as soon as possible. The appearance of this is quite disturbing as lots of time and money went into defeating this regulation which was sought by a national political medical lobby. That lobby tried to manipulate the regulatory process by bringing pressure to bear upon the BCE through the Assembly Health Committee. It took a lot of political manuevering and hours of work to insure that the practice rights of licensed DC's were not placed in jeopardy by any outside group or by any illegal procedures.

Thank you very much.

Brian A. Smith, DC

----- Original Message -----

From: Kim Smith
To: btimes2@earthlink.net
Sent: Wednesday, February 18, 2004 12:31 PM
Subject: RE: reg 317(z)

From: "B & B" <btimes2@earthlink.net>
To: "office" <doctorsmith@earthlink.net>
Subject: Fw: Section 317(z)
Date: Friday, March 26, 2004 1:53 AM

----- Original Message -----

From: "Lavella Matthews" <LMatthews@chiro.ca.gov>
To: <btimes2@earthlink.net>
Sent: Thursday, March 25, 2004 4:27 PM
Subject: Re: Section 317(z)

This is in response to your inquiry on Section 317(z).

We are in the process of researching your inquiry regarding section 317 (z). Due to the age of the rulemaking file, this research may take some time. We will advise you of the outcome of our research.

Lavella Matthews
Regulations and Board Relations Coordinator
Board of Chiropractic Examiners
(916) 263-6465
FAX: (916) 263-5369